

**THE SIGNIFICANCE OF VIDEO EVIDENCE ANALYSIS IN THE INVESTIGATION OF
MURDER CASES AGAINST THE POLICE**

by

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Abstract

The researcher attempts to establish ***the significance of video evidence analysis in the investigation of murder cases against the police***. The evidence obtained could be crucial and admissible in court and ultimately resulted in the successful prosecution of an accused person. In order for investigators to conduct an effective investigation, it is important that they become familiar with the application of video evidence, its purpose, benefits and shortfalls.

In order to achieve the intended goals and objectives of video evidence, the investigators should know how to collect, package, process and analyse video evidence.

The clarification and processing of the crime scene of video evidence as well as the identification of a suspect at the scene of crime is very much important and without video evidence it would be difficult to convict an accused person in a court of law.

LIST OF KEYWORDS

Analysis

Collection

Evidence

Investigations

Maintaining chain of possession

Mitigation

Murder

Processing

Presentation

Packaging

Prosecution

Significance

Video

List of Abbreviations AND ACRONYMS

CCTV- Closed Circuit Television

CIC- Case Intake Committee

CIJ- Case Investigative Journal

DPP- Director of Public Prosecutions

ECA- Electronic Communication Act

FSL- Forensic Science Laboratory

ICCPR- International Covenant on Civil and Political Rights

IPID- Independent Police Investigative Directorate

LAPD- Los Angeles Police Department

LCRC- Local Criminal Record Centre

SAPS- South African Police Service

SOP- Standard Operating Procedure

UK- United Kingdom

UN- United Nations

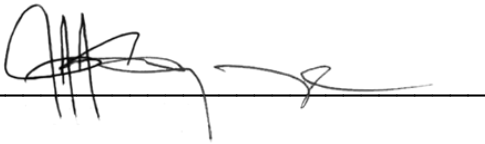
UNISA- University of South Africa

UNODC- United Nations Office on Drugs and Crime

US- United States

Declaration

I, Ketsebae Israel Kgamanyane, student number 34446354, declare that ***“THE SIGNIFICANCE OF VIDEO ANALYSIS IN THE INVESTIGATION OF MURDER CASES AGAINST THE POLICE”*** is my own work and that all the sources I have used or quoted have been indicated and acknowledged by means of complete references.



Signature

26 April 2018

Date

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CHAPTER 1: GENERAL ORIENTATION

1.1 INTRODUCTION

With the increased presence of technology such as closed-circuit television (CCTV), along with the increased use of video equipment during police operations, it is now common place for these methods to be used in the identification process at a trial (cf Doak, McGourlay & Thomas, 2015:263). In addition, and in the South African context, the idea of video evidence analysis within forensic investigations has been developing and growing at a fast rate over the past few years. In certain cases, murders committed by police officials have been captured on video footage, which has been produced as evidence in the subsequent court trials. According to Mabona (2015:1), the case of Mido Macia in Daveyton and the case of Khulekani Mpaza in Krugersdorp are good examples of how video evidence played a role in capturing the events in these cases. In both cases, the police officials were recorded in a video clip showing how they inflicted wounds on the victims, who later died. In both cases, such video evidence was used successfully by the prosecution and the investigators to secure a conviction.

More generally, given the availability of modern technology for investigations, it is important to use video footage during the investigation and prosecution of murder suspects. Although this statement refers to any murder, the focus of the current research is confined to murders perpetrated by the police and investigated by the Independent Police Investigative Directorate (IPID). The study investigates the value of video evidence as it is utilised by the police oversight body in South Africa. Against

this background the researcher looked at what video evidence analysis is, how it can be used in investigation of murder cases against the police and how this can improve the conviction rate of murder cases against the police. This chapter provides the statement of the problem for the research, the aim and the research questions. The methodological approach for this research is also discussed. This is followed by the clarification of concepts pertinent to the research.

The measures that were used to ensure reliability and validity are outlined and the ethical considerations for this research discussed. The chapter ends with an outline of the chapters of the dissertation.

1.2 PROBLEM STATEMENT

According to Fouche and Delport (2011:108), the problem statement delimits the focus of the study and spells out the specific problem that the researcher intends to investigate. In the context of this research, the problem identified was that IPID investigators do not seem to use video analysis as evidence in the investigation and prosecution of murder suspects. This problem is caused by a lack of knowledge or understanding of video evidence or an underestimation of the value of video evidence. This may in turn have a negative impact on the investigation process and on the resolving of crime in general.

As an initial exploration of the topic, the researcher focused on the case dockets that were opened and reported during the 2014/2015 financial year. The IPID annual report of 2014/2015 reveals that IPID was assigned to investigate 499 cases of death as a

result of police action (murder), of which only 319 cases were completed. Out of the 319 cases completed, only 87 criminal recommendations and 27 convictions ensued. This means that there were 180 cases that were not completed and 292 that ended without a conviction. These included cases where the accused were acquitted, or the prosecutor declined to prosecute and those cases that were closed as undetected. The researcher investigated the reasons for cases that did not secure conviction. It was discovered that a common reason amongst these cases was that video evidence was not professionally collected and used in the subsequent trials.

The value of video evidence has been unanimously endorsed by Pigott, who emphasised the importance of disclosing the nature of the original allegation (Pigott, in Doak, McGourlay & Thomas, 2015:104). Video evidence has proved to be useful in the investigation of murder cases. In his preliminary research, the researcher found several cases that could serve as testimony to the advantages and disadvantages of the use of video evidence.

Two of these cases are the Mido Macia case, which took place in Daveyton CAS 657/02/2013 and a Krugersdorp CAS 664/10/2015 case that involved a certain Khulekani Mpanza as discussed in the introduction to this chapter. The investigation diaries in the perused cases revealed that investigators had used basic video evidence, which included footage captured by amateur individuals with their cell phones as well as CCTV cameras. It appears that the training curriculum of IPID investigators does not cover the use of video evidence although investigators are expected to investigate cases with this type of evidence. This leads to the problem of the under-utilisation of video evidence because the court cannot rely on video

evidence if it has not been properly captured and prepared for the courts as the integrity of such evidence is essential. Video evidence that lacks integrity render such evidence inadmissible.

The lack of and/or misuse of video evidence has several consequences. For instance, it is clear that the IPID receives and deals with a large number of “death as a result of police action” (murder) cases every year. The criminal recommendation and conviction rates for these cases appear to be low and this could be attributed to the fact that video evidence or footage is probably not used or not used correctly by investigators when conducting their investigations of these cases. Video footage evidence that lacks integrity possibly as a result of inadequate analysis by a forensic science laboratory, its incorrect presentation in court or the lack of continuity of possession, is not necessarily of assistance to the court of law. In a nutshell, the integrity of video evidence is often questionable.

The researcher is of the view that such a shortcoming may have been a contributory factor in the high number of cases in which the prosecutor declined to prosecute or that were finalised as undetected. It may also have contributed to the low number of convictions; hence, this also formed a basis for this research problem. If perpetrators were not successfully prosecuted because investigators confined themselves to a specific kind of investigation, the perpetrators were not brought to book. It is also obvious that if they were not successfully prosecuted, complainants or the public and the victims’ families would lose confidence in the ability of oversight bodies such as the IPID. The most worrying result of the problem is that the perpetrators commit similar offences repeatedly without being prosecuted and in this case, the criminal justice

system fails to deal with recidivism. Hypothetically speaking, it is also important that criminal investigators understand that the analysis of video evidence is important where there are possible cover-ups by police immediately after the incident has happened even before the arrival of the IPID investigators at the crime scene. If video analysis is used effectively, many murder cases would be solved and their occurrence minimised. In turn, the conviction rate would increase, thus restoring public confidence.

1.3 RESEARCH AIM

According to Profetto-McGrath, Polit and Beck (2015:93), research aims are the specific accomplishments the researcher hopes to achieve by conducting the study. The aim for this intended research was to determine the significance of video evidence analysis in the investigation of murder cases against the police.

1.4 RESEARCH PURPOSE

Oates (2009:16) states that there are several reasons for conducting research, which include adding to a body of knowledge, solving a problem, finding what happens to forensic evidence, informing practice and empowering. According to Denscombe (2002:29), the purpose of a research study requires the researcher to identify a relatively narrow and precise area for investigation, rather than setting out to investigate some general areas of interest. Preliminary research conducted by the researcher revealed that there is a problem in the successful investigation of cases by the IPID, with the majority of the murder cases investigated by the organisation resulting in the court declining to prosecute or the accused being found not guilty (IPID 2014/2015). The main purpose of the research was therefore to look into specific

reasons that lead to the imbalance between the number of murder cases reported to the IPID and the number that achieve a conviction. The researcher conducted this research to see cases of murder against the police being minimised and successfully prosecuted.

An important purpose of this research was to empower investigators in general. Although the research topic focuses on murder cases perpetrated by the police, it is the submission of this researcher that the results of this research could empower the general populace of investigators in South Africa. "Empowerment" refers to the ability of research to change the manner in which certain things are traditionally done. This research aimed to bring about improvements in how IPID investigators have been using video evidence in solving murder cases.

It was also envisaged that the results of this research could be used to improve current practices. The IPID investigators appear to be disregarding the utilisation of video footage analysis as evidence during investigation. The research intends to provide clear guidelines that investigators can utilise to improve the manner in which video evidence is used.

1.5 RESEARCH QUESTION

Aparasu (2011:41) describes a research question as an explicit inquiry that yields hard facts to help challenge, examine, analyse or solve a problem and produce new research. Maree (2016:3) emphasises that the research question specifies what intrigues the researcher and focuses on what the researcher studied.

This research set out to answer the following question:

What is the significance of video evidence analysis in the investigation of murder against the police?

1.6 VALUE OF RESEARCH

Creswell (2014:119) submits that writers often include a specific section describing the significance of the study for select audiences in order to convey the importance of the problem for different groups that may profit from reading. In other words, the writer seeks to convince the reader by means of well thought out arguments that the study is significant and should be conducted to address specific social problems.

Creswell (2014:119) further states that in this section the writer might include what the study adds to the scholarly research and literature in the field, how to help improve practice and why it would improve policy or decision-making. Most importantly, a Sarantakos (2013:12) point out that research produces knowledge, and knowledge is power. This view was indeed a point of departure, without knowledge, we might not be able to define a problem that needs investigation and what causes that problem.

1.6.1 Value to the Researcher

According to McNiff and Whitehead (2011:164), doing research involves learning how to understand what is going on in social situations and why, and how to challenge normative practices and contribute to improving the social order. Police investigation is a science of legally gathering information that can be presented as evidence in a court of law or any legal proceedings to prove or disapprove certain allegations. It requires one to keep up to date with the new methods of gathering evidence. The main

objective of keeping up with the new methods is to present credible evidence in court would result in convictions.

Gray (2014:45) states that researchers should consider whether their research projects will add value in terms of personal career development. This study resides within the researcher's area of specialisation, which is police oversight as practiced by the IPID. This researcher is an investigator and a senior manager in this field and utilises video evidence in murder cases opened against the police.

1.6.2 Value to the IPID

According to Denscombe (2010:26), research responds to a need for action and change in relation to things such as organisational rules, work practices and policy agendas. McNiff and Whitehead (2011:94) urge that the research can be important in that it informs new practices and new policies.

On successful completion, this dissertation would be made available to the IPID and South African Police Service (SAPS) to assist these organisations to refine their investigation mechanisms and bench mark them against the best international practices in order to use video evidence in the investigation of murder cases opened against the police.

1.6.3 Value to the Academic Community

Denscombe (2010:13) submits that good research is whose topic and direction are a direct consequence of working at the cutting edge of knowledge, driven by theoretical issues and practical problems that the community of scholars identifies as necessary

for the further advancement of the discipline. McNiff and Whitehead (2011:166) agree with these sentiments and state that the researcher's contribution is to share their knowledge so that others can learn from it and develop it. It is envisaged that the findings of this research would be published in an accredited scientific journal in which the new knowledge and information derived from the research would be shared with other scholars (Denscombe, 2012:50).

1.7 METHODOLOGICAL APPROACH AND DESIGN

1.7.1 Research Design

According to Creswell (2013:3), the methodological approach of a research study is the plan and the procedure for research that span the steps from broad assumptions to detailed methods of data collection, analysis and interpretation. In this study, the research approach followed was empirical research approach. The researcher chose empirical research in order to interact with the investigating officers. The researcher also used empirical research to observe the participants in order to answer the research questions under study on the significance of video evidence analysis in the investigation of murder cases against the police. The evidence collected during empirical research was analysed.

The researcher gained knowledge by observing investigators. According Kothari (20014:4) empirical research relies mostly on experience and observation. Further, Bhattacharjee (2012:35) indicates that empirical research is aimed at answering a specific research questions and should specify three processes, namely; 1) data collection process, 2) instrument development process and, 3) sampling process.

However, Jasti and Kodali (2014:1080) state that empirical research plays a role in generating theory.

Empirical research method relies on experiences and observations and derives knowledge from actual experience and tests predictions by focusing on real people and situations. It forms a body of knowledge and well-formed theories by involving collection and analysis of data and experiences to characterize, evaluate and reveal relationships between deliverables, practices and technologies. The empirical research seeks to gain knowledge by getting proofs based on evidence from experiments, observations or experiences. From the researcher's experience of working at the IPID for a period of 19 years, 09 years as a Manager and 10 years as an investigator shares the same sentiment with Hakansson (2013:5) who indicates that empirical research relies on experiences and observations which derive knowledge from actual experience and tests predictions by focusing on real people and situation. It seeks to gain knowledge by getting proofs based on evidence from observation or experiences (ibid).

1.7.2 Research Approach

This research followed a qualitative research design. Babbie (2014:93) explains that a research design deals with planning of research in terms of the paradigm and which data would be collected and analysed. The researcher made use of qualitative research methodology in this study because it relies on transformation from reports, and recordings into data in the form of written words rather than numbers (Denscombe, 2010:325).The researcher for conducting qualitative research was that the researcher was able to interact with investigators during interviews and experience

feelings in how they talk about the significance of video evidence analysis in the investigation of murder cases against the police.

1.7.2.1 Population and Samples

The following discussion focuses on the population and sampling used in the study:

- Population

The population in this study was half of the total of IPID investigators in Gauteng Provincial Office and the population was identified by the researcher as he was employed by the IPID. He has the knowledge of the cases that involved video evidence which could be of assistance to the research and would be in a better position to answer the research questions under study.

- Sampling

Walliman (2011:93) state that sampling involves the selection of a small group of cases from the population. A purposive type of sampling was used in the study, since the researcher chose only investigators that investigated cases where video evidence was used instead of choosing any investigator. According to Mason (2002:121) in qualitative research, the reasons for sampling are three-fold; 1) practical and resources-based and 2) deal with the important question of focus, 3) they help to provide with the data needed to address the research questions. Of at least were used in the study because of their experiences of investigating cases where video evidence was analysed in the investigation of murder cases against the police.

The current research solicited a wide range of sources that dealt with the significance of video evidence analysis in the investigation of murder cases against the police.

1.7.2.2 Data Collection

The researcher conducted interviews with the investigating officers. Creswell and Clark (2011:171) explain that the basic idea of collecting data in any research study is to gather information to address the questions being asked in the study. Bryman (2012:12) adds that the researcher needs to establish in advance the broad contours of what he or she needs to find out about and designs research instruments to investigate what needs to be known. Therefore, during the course of the research, it became necessary for the researcher to conduct interviews using an interview schedule in order to assist the researcher when posing questions to the participants. In collecting the data, the researcher used interview schedule which was completed by the investigators in their own offices. The researcher collected interview schedules after the completion by investigators. The interview schedule was divided into three sections; namely: section A, which focuses on historical information of the participants, Section B, which focuses on the answering of the first research question and Section C which focused on the second research question.

1.8 DATA ANALYSIS

During data analysis, the researcher analysed the interview transcripts, developed themes and each section of the sample which were analysed separately and formed themes and categories. Maxfield and Babbie (2011:112)

submit that researchers analyse and interpret data in order to come to conclusions that reveal the thoughts and concepts that instigated the study in the first place. According to Holloway and Wheeler (2013:282), the process of analysis goes through certain stages common to many approaches. The purpose of data analysis is to explore and explain what is underlying or what is broader in the data (Silverman, 2011:9).

For the purpose of this research, the researcher followed the spiral data analysis method. In accordance with Creswell's (2013:182–188) guidelines, the researcher followed several steps in analysing the data.

These steps are described below:

- Organising the data: This researcher organised the data collected through the use of interview schedule,
- Reading and memoirs: The researcher read and re-read the interview schedules of all the investigators and compared their version on the topics in the interview schedule.
- The researcher continued the analysis of the data by getting a sense of the whole database by reading all the available data several times before breaking it into smaller parts, describing, classifying, and interpreting data in categories and themes.
- The researcher built detailed descriptions, developed themes, and provided an interpretation taking into consideration his own views and the perspectives found in the literature.
- Interpreting the data: At this stage, the researcher interpreted the data, which means that the researcher made sense of the data.

- Representing and visualising the data: In the final phase of the data analysis spiral, the researcher presented the results of the analysis, in this case as text rather than numbers.

1.9 STRATEGIES TO ENSURE TRUSTWORTHINESS

According to Bless, Higson-Smith and Sithole (2013:236), trustworthiness in qualitative research is measured in terms of how much trust can be given to the research process and the findings. For this research, the researcher ensured the trustworthiness of the research process and findings by adopting the four principles of trustworthiness: credibility, dependability, transferability and confirmability, as suggested by Bless *et al.* (2013) and Du Plooy-Cilliers, Davis and Bezuidenhout (2014).

These concepts are discussed below.

1.9.1 Credibility

Credibility corresponds to the concept of internal validity, since it seeks to convince that the findings depict the truth of the reality under study, or, in other words, that they make sense (Bless *et al.*, 2013:236). The researcher ensured credibility by making sure that he stuck to the themes when searching for relevant literature. The analysis of literature was conducted in such a way that it considered the relevance of the literature to answering the research question and to fulfilling the research aim. Only literature that pertained to the significance of video evidence in the investigation of murder against the police was reviewed.

1.9.2 Transferability

According to Du Plooy-Cilliers, Davis and Bezuidenhout (2014:258), transferability is the ability of the findings to be applied to a similar situation and deliver similar results. Transferability can be compared to external validity since it refers to the extent to which results apply to other, similar, situations (Bless *et al.*, 2013:237). In indicating its transferability, research must show the relationship between the researcher and the participants and how data was collected. The availability of such information makes it easier for other researchers to compare and assess the similarities between the given situation and other settings or contexts; that is, whether the findings are transferable to these other contexts. The researcher subjected the research findings to peer-review for comments about the transferability of the research.

1.9.3 Dependability

Dependability of the research demands that the researcher thoroughly describes and precisely follows a clear and thoughtful research strategy (Bless *et al.*, 2013:237).

All the steps that were completed need to be shown, including the sampling method and how data was collected, recorded, coded and analysed. This ensures the quality of the process of integration.

1.9.4 Confirmability

Confirmability, which is similar to replicability, requires that other researchers or observers are able to obtain similar findings by following a similar research

process in similar context (Bless *et al.*, 2013:237). Confirmability simply means that another researcher may come into the same conclusion as the researcher under the same circumstances and context.

1.10 ETHICAL CONSIDERATIONS

According to May (2011:61), ethics is concerned with an attempt to formulate codes and principles of moral behaviour. Denscombe (2010:331-337) indicates that to adhere to the ethical requirements of research, the researcher should follow the key principles of research ethics. First, participants' interests should be protected by respecting their privacy, protecting them from harm, treating all information disclosed as confidential, and guaranteeing the anonymity of individuals. Second, participation should be voluntary and based on informed consent.

In the current research, the participants were requested to provide informed consent by using a consent form. Before they signed the consent form, the researcher informed them of the nature of the research, the choice of participating in the research, the choice of withdrawing at any time and that participation was voluntary.

Researchers should also operate in an open and honest manner with respect to the research. To achieve this, the researcher produced a brief summary of the aims of the research and the nature of data collected, he did not use other researchers' work as his own, and he acknowledged all sources consulted.

Research should comply with the laws of the country. The researcher strictly complied with the legislation governing intellectual property rights and copyright matters and with other legislation relevant to the research.

The researcher also complied with ethical principles as provided in UNISA policy on ethics (UNISA, 2007:9-17).

1.11 KEY CONCEPTS

The following are the concepts used in the study:

1.11.1 Video Evidence

Video evidence is gives rise to complex questions about its integrity, reliability and accuracy (Stanfield, 2016:11). Video evidence is the evidence produced from the video footage. For the purpose of the study, the video evidence is the evidence which can assist the investigating officer in determining the murder suspect. Video evidence is the sources of video evidence from which video may be recorded or recovered (Bureau of Justice Assistance, 2016:3).1.10.2 Evidence analysis.

1.11.2 Evidence Analysis

Evidence analysis is the determination of authenticity and relevance of the evidence whether it has evidential value and can be able to stand in court and evidence. Peterson, Sommers, Baskin and Johnson (2010:2) define evidence

analysis as a process in which evidence related to a criminal trial is analysed in order to learn about it.

1.11.3 Investigation

Investigation is systematic search for the truth. When a crime has committed investigating officer have a duty to find out how crime occurred, who is responsible, and ask victims how the suspect violated their rights. The researcher regards investigation as a tool for finding the truth on murder against the police. Investigation involves the identification of physical evidence, gathering information, evidence collection, evidence protection, witness interviewing and suspect interviewing and interrogation in order to find the truth about the alleged crime (Gehl & Plecas, 2018:62). Gunter and Hertig (2005:2) define investigation as “systematic finding and reporting process”.

1.11.4 Murder

Murder is defined as unlawful and intentional killing of another person. For example, X was shot dead while at the tavern. Murder involves the taking/killing another person in an intentional and unlawful manner (Papachristos, 2009:75). However, Brookman, Maguire and Maguire (2017:217) define homicide as “the killing of a human being, whether the killing is lawful or unlawful”.

1.12. CHAPTER LAYOUT

- Chapter 1: General Orientation

- Chapter 2: The Significance of Video Evidence Analysis in the Investigation of Murder Cases Against the Police
- Chapter 3: Presentation, Analysis and Interpretation of the Study Findings.

1.13 SUMMARY

The main purpose of this chapter was to highlight the steps that the researcher followed in conducting the current research. The problem statement was stated and the research aim, research question and purpose statement followed the problem statement. Furthermore, the researcher shared the envisaged value of the research to the IPID, the SAPS and the academic community. The researcher explained the type of research approach and design followed in this research along with the manner in which data was collected and analysed. This includes pointing out that data collection was conducted in line with international best practices. This researcher intended to make recommendations based on the findings and in this way, address the problem identified.

In the next chapter, the researcher discusses the significance of video evidence in the investigation of a crime scene. In the next chapter, the researcher discusses the video evidence analysis in the investigation of video evidence analysis in the investigation of murder cases against the police.

CHAPTER 2: THE SIGNIFICANCE OF VIDEO EVIDENCE ANALYSIS IN THE INVESTIGATION OF MURDER CASES AGAINST THE POLICE

2.1 INTRODUCTION

The use of video evidence analysis within forensic investigations has been developing and growing at a fast rate over the past few years around the world. In some instances, murders committed by police officials have also been captured on video footage, which has been used as evidence in the subsequent court trials. Taking into consideration the availability of modern technology and its usefulness as a form of evidence, it is important that video footage be used during the investigation and prosecution of murder suspects and people accused of this crime. The purpose of this chapter was to answer the research question “What is the significance of video evidence analysis in the investigation of video evidence analysis in the investigation of murder cases against the police?”

2.2 THE IMPORTANCE OF VIDEO EVIDENCE IN THE INVESTIGATION AND DETERRENCE OF CRIME

The importance of video evidence in the investigation of murder cases against police officers and its impact on the reduction of the crime of murder are discussed below. The South Africa and international perspectives play a very important role for benchmarking purposes and best practices. These perspectives are presented below.

2.2.1 South African Perspective

The major advantage of mobile devices from a forensic perspective is that they can contain deleted information even after an individual has attempted to render the information unrecoverable.

For the collections of extraction and analysis issues that mobile devices present, they are an excellent source of digital evidence and can provide insight that is unavailable from other devices. Additionally, the personal nature of the device makes it easy to establish the evidence required to tie a device to an individual (Eoghan, 2011:3).

In some of the instances, murders committed by police officials have also been captured on mobile devices and CCTV cameras In South Africa, video evidence has been used in the trials of police officials accused of murder. According to Mabona (2015:1), the case of Mido Macia in Daveyton and the case of Khulekani Mpaza in Krugersdorp are good examples of how the video evidence played a role in capturing the events in these cases. In the cases of Mido Macia in Daveyton and Khulekani Mpaza in Krugersdorp in Gauteng Province, South Africa, the police officials were recorded in a video clip showing how they inflicted wounds on the victims who later died. In the first case, the prosecution and the investigators used video evidence successfully to secure a conviction while the second case was still being investigated at the time of writing (Mabona, 2015:1).

2.2.2 International Perspective

Video footage was used as a crime-deterrence technique by William Bratton as chief of the Los Angeles Police Department (LAPD), a position to which he was appointed in 2002. Prior to his appointment, crime had increased in Los Angeles by 54% over the previous three years (Economist, 2007). He brought the same crime-reduction strategies to the city that he had previously applied in the larger metropolitan areas cities of New York and Boston. The strategies focused on minor criminal offences to deter serious crimes later, with one of the deterrence methods being to capture these minor offences through the deployment of video cameras.

Krueger (2011) cites a case example of evidence of a murder being committed provided by a message on a mobile device, where Ronald Williams killed his wife Manama, apparently in a fit of rage after learning that she had had an affair. Unbeknown to Williams, his cell phone pocket-dialed his wife's cell phone during the crime and the call went to voicemail.

The recording on his wife's voicemail captured him stating that he was going to kill her, followed by her screams and their two-year-old daughter pleading with Williams to stop.

In some cases, accomplices use mobile devices to record a crime, as occurred in the United Kingdom (UK), when a 15-year-old girl was found guilty of aiding and abetting manslaughter after she recorded the fatal beating of a man (Borland, 2008). Another classical example took place in Manchester, in the UK, in 2010. In this case, a 15-month-old Charlie Hunt was brutally beaten by his mother's

boyfriend over several months. Incriminating evidence in the form of video evidence was found, which the boyfriend captured himself using his mobile device. He was thereafter sentenced to life imprisonment (Williams, 2010). It is evident that video evidence can play an important role in the investigation and deterrence of murder cases especially against police officials.

2.3 THE CURRENT PRACTICES, PRINCIPLES AND CHALLENGES OF VIDEO EVIDENCE GATHERING DURING INVESTIGATION

The value of using video footage evidence in the investigation of some forms of serious crime is unquestionable. It allows the gathering of information that is unattainable through other means. The use by law enforcement agencies of video footage should not be an investigative tool of first resort but instead its use should be considered when other intrusive means have failed and there is no alternative means to obtain the evidence. (United Nations, 2009:1).

2.3.1 The practice and principles governing electronic video evidence gathering during investigation.

In general, the primary considerations that limit the use of electronic video evidence in the investigation of a crime are: 1) necessity, which indicates that the gathering of electronic video evidence is necessary for obtaining the evidence or information required; 2) subsidiarity, in that another less intrusive form of investigations is not sufficient for gathering confidentiality; 3) judicial control, which is the process of evidence gathering overseen by the judge; 4) proportionality, in that the intrusion into privacy is proportionate to the

seriousness of the suspected offence and the evidence that it is anticipated will be obtained; and 4) confidentiality, which indicates that the activities that form part of this special technique will be known only to the official authorised by the law (United Nations, 2009:20).

2.3.2 The Challenges of Electronic Video Evidence Gathering

The challenges of electronic video evidence gathering include resourcing, training and technology. These challenges are discussed below.

2.3.2.1 Resource Constraints

The strain on resources is significant and may discourage investigative and law enforcement agencies from conducting crime investigations.

2.3.2.2 Training

It is evident that lack of specialist training for investigators, prosecutors and judges significantly hinders their capacity to engage in electronic video evidence gathering to any significant degree. This is because training struggles to keep up with technological advances.

2.3.2.3 Technology

Resource constraints limit the attainment and use of hi-tech electronic equipment and technologies by investigators. The challenges associated with advanced technology include:

- 1) Telephone number portability, which means that consumers can change telecommunication service providers without changing their phone numbers;
- 2) Email and chat, which is legally privileged material so not only likely to be inadmissible as evidence but could throw into question other evidence gathered in the investigation by the same technique;
- 3) Pre-paid mobile telephones, whose use makes electronic video evidence gathering difficult if not impossible; and
- 4) Telephone communications service providers, whose cooperation is required for the investigation (United Nations, 2009:35).

Jones (2008) indicates that mobile devices are dynamic systems that present challenges from a forensic perspective, with experts postulating that five new phone models are released every week.

There are unique considerations when preserving evidence from mobile devices as most of these are networked devices, sending and receiving data through telecommunications systems. Digital evidence in mobile devices can be lost completely as it is susceptible to being overwritten by new data or remote destruction commands received by the device over wireless networks. Mobile devices are posing a challenge on a data recovery and evidence analysis (Eoghan, 2011).

From the above discussion, it is clear that the current practices and principles should be embraced and the challenges of video evidence gathering during

investigation effectively and efficiently addressed because this will assist in the detection of murder cases and subsequent convictions of identified suspects.

2.4 EXISTING STANDARD OPERATING PROCEDURES

For any legal entity entrusted with the responsibility of investigating cases and thereafter presenting evidence about these cases before the court, it is important that the entity develop policies and procedures that are consistent with the legislative prescripts of the country in which it operates. The policies serve as a guiding document for investigators during investigation and, if implemented and followed to the latter, keep obstacles to presenting this evidence to a minimum.

2.4.1 The IPID Standard Operating Procedure

The IPID standard operating procedure (SOP) is discussed below.

2.4.1.1 The Features of the Standard Operating Procedure

The SOP states that its purpose is to establish policy and methods by which cases should be received, registered, processed and disposed of, taking into consideration the provisions of the Constitution and other applicable laws of the Republic of South Africa.

The SOP deals with the applicable policies, definitions and applications along with the duties and responsibilities of the IPID Executive Director, Programme Manager, Provincial Head, Director Investigations, Deputy Director Investigations, Investigator, Supervisor and the Case Intake Committee (CIC).

The SOP details procedures for filing documents in a case file; registering cases; investigating cases listed under sections 28 and 33 of the IPID Act, Act 1 of 2011 (which include murder cases); completing and closing case files; archiving closed files; obtaining and returning SAPS case dockets; referring cases; investigating crime scenes, executing arrests and obtaining DNA forensic samples. It also includes the regulations, delegations, penalty provision and revision.

2.4.1.2 The Responsibilities and Duties of an Investigator

In accordance with the SOP, investigating officers in the IPID should ensure that they receive a file allocated for further investigation from a supervisor or CIC. Once they have received such a file, they should update the case management system. They should then generate letters to the complainant, victim, next of kin or referral authority and relevant stakeholders in which they indicate that they have been assigned to investigate the case. They should conduct their investigations and submit the case file for inspection as directed in writing in the case investigative journal (CIJ). They need to comply with the dates brought forward as determined by the supervisor or CIC, initiate the completion of the investigation by submitting a file with recommendations to the supervisor for decision and submit the file for decision to the Director of Public Prosecutions (DPP).

The procedure for the investigation of murder cases against the police indicates that the investigator must ensure that he or she:

- Take over the crime scene from the SAPS investigator;

- Identifies the body, and inspects and records the wounds;
- Sees to it that all vital clues and forensic evidence have been marked and photographed in their original position by the Local Criminal Record Centre (LCRC);
- Collects or ensures the collection of exhibits from the crime scene for processing by the Forensic Science Laboratory (FSL);
- Ensures that the evidence is placed and sealed in a designated evidence bag and that the serial number is recorded in full in the CIJ,
- Ensures that the exhibits are booked in with the SAP13 at the police station within that jurisdiction;
- Submits a detailed statement indicating that the exhibits were handed to the FSL or LCRC member intact in a sealed bag; and
- Obtains a statement from the FSL or LCRC member to whom the evidence was handed (IPID, 2015).

2.5 THE US HOMICIDE STANDARD OPERATING PROCEDURE

This section discusses the United States (US) homicide SOP and compares it to the SOP of the IPID.

The US Homicide SOP specifies the duties and responsibilities of the first officer at the scene of crime, which entail arriving safely, ensuring safety at the scene, arranging for medical assistance, apprehending the suspect, securing the crime scene and calling for assistance.

The duties and responsibilities of an investigator, as specified by the SOP, entail assessing the scene, managing the scene, providing the initial documentation of the scene, canvassing the area and dealing with the suspect.

The investigator processes the scene, which involves photographing and video recording the scene, searching the scene and sketching it. Latent fingerprints are collected along with trace evidence, fluids and fibres. Evidence control and notification must take place.

Evidence control, which in accordance with the SOP must be guided by principle, policy and procedure, dictates that one dedicated person should be responsible for collecting and packaging all evidential items taken from the scene. In a large crime scene, areas of responsibility are assigned to different individuals and the investigator makes sure that the chain of custody for all evidence, including video evidence, is continuously well maintained. Each transfer of evidence is documented, beginning at the crime scene.

The SOP specifies that the investigator needs to document each piece of evidence found at the scene in terms of:

- Who found it?
- What was found?
- When and where it was found?
- Who collected the evidence?
- When was the evidence collected?
- Where it was collected?
- What was collected?

- How was the item packaged?
- What is the evidence number?
- What is the photograph number?

All pieces of evidence must be photographed before they are collected. The location of each piece of evidence on the crime scene sketch must be documented. The identity and assigned duties of all participating personnel should be recorded (Howell, 1999). The effectiveness of the existing standard operating procedures plays an important role in the sense that it guides and directs investigators during the course of the investigation. The two SOP seems not to have the procedure of dealing with video evidence and hence it is important to have it in the SOP.

2.6 THE EFFECTIVENESS OF VIDEO EVIDENCE

A study of video evidence measures the effectiveness of this type of evidence to deter crime in select locations. The proponents of video evidence argue that it may deter criminal behaviour by increasing the probability of detection and apprehension of criminals. However, evidence pertaining to its effectiveness is mixed and concerns about privacy infringement persist.

Video evidence can play a direct role in identifying and apprehending a suspect and can assist investigators to establish linkages between people and their online activities. This process can be challenging using digital evidence alone, but, when combined with traditional investigative techniques, it can provide the necessary clues to track down criminals.

Digital video evidence can assist in answering many questions in an investigation, ranging from the whereabouts of a victim at a given time to the state of mind of a suspect when committing a crime (Van Rooyen, 2012:204).

Van Rooyen (2013:273) states further that digital video evidence is considered secondary (third party) evidence. When supplied it should be only in relation to data messages made during the normal course of business for the person or institution concerned and should meet the following criteria:

- An affidavit must accompany the evidence stating the nature of the information provided and the medium in which the information is provided, and must certify that it was generated during the normal course of business and that it is a correct copy of that information;
- If the evidence is provided in the form of printouts, then the person providing the information should initial each page of the printout;
- If the evidence is provided in an electronic format, it must be provided on a read-only medium, such as a CD-ROM disk or in a format usable by an investigator.

2.6.1 South African Perspective

The IPID received 593 cases of “death as a result of police action” to investigate in the 2013/14 financial year and completed 379 of these cases. In 72 cases, recommendations were made to the DPP and only 27 resulted in criminal conviction. This meant that the court declined to prosecute 45 cases or that these 45 cases resulted in an acquittal. The rest of the 521 cases were either

unresolved or received an unsubstantiated verdict (IPID Annual Report, 2013/14:27).

According to the IPID annual report of 2014/15, the IPID opened and investigated 740 cases of death as a result of police action (murder) in that financial year, only completing 393 cases. Of the 393 completed cases, only 33 criminal recommendations and 21 convictions were achieved. This means that 347 cases were not completed and that 372 cases ended up without conviction. These included cases where the accused were acquitted, the prosecutor declined to prosecute, or the cases were closed as unsubstantiated.

The IPID annual report of 2015/16 reveals a similar pattern, where 713 cases of “death as a result of police action” were reported and investigated and out of these only 470 cases were completed (IPID Annual Report, 2015/2016:47). At least 57 case recommendations were sent to the DPP for a decision and only 25 resulted in criminal convictions, with 243 cases unresolved and 445 ending up without conviction.

Given the above, it is evident that cases generally did not end up with a conviction and the majority remains unresolved. The particular reason that was common amongst most of these cases was that video evidence was not professionally collected and used in the subsequent trials.

2.6.2 International Perspective on Standard Operating Procedure

The California Research Bureau cites the importance of video evidence in prosecuting the perpetrators of the first World Trade Centre Bombing. According to Deputy Chief Charlie Beck of the LAPD, recorded evidence of a crime is also instrumental in gaining a confession from the suspect before court proceedings begin.

Two modes of deployment currently enable electronic video evidence gathering in public spaces: actively monitored systems and passively monitored systems. Actively monitored systems require personnel to monitor the electronic screens in real time while passively monitored systems provide a record of criminal activity that can be used as evidence later.

The electronic video evidence gathering acts as a “force multiplier” that can prevent crime by enhancing law enforcement’s ability to detect and apprehend criminals; increasing the public’s awareness of criminal activity; and elevating the perceived risk of apprehension to criminals (United Nations, 2009:7).

During December 2007, the United Nations Office on Drugs and Crime (United Nations, 2007) commenced the first meeting with expert representatives from law enforcement agencies and prosecutorial and judicial Member States. They met on 3-5 December 2007 with a second meeting on 17-18 March 2009. These meetings had the goal of utilising the participants’ expertise and experience to develop a training manual for electronic surveillance. Owing to the complexity of the subject matter, it was decided that as a first step it would be useful to draft a

comparative study of electronic surveillance regulation and practices, but also complete more general research in the area.

The effects of video evidence contribute towards improved detection and conviction rates as evidenced in the three previous IPID annual reports in terms of their statistics regarding the successful handling of “death as a result of police action” cases. The success of cases solved using video evidence by international counterparts indicates that this type of evidence can be useful during IPID investigations.

2.7 ELECTRONIC VIDEO EVIDENCE IN CRIME SCENE INVESTIGATION

All crime scenes are unique, the judgment of the first responder plays an important role, and the applicable legal prescripts should be considered. The first responders should apply general forensic procedures and principles when dealing with digital evidence (U.S. Department of Justice Office of Justice Programs, 2001).

An investigator securing a crime scene should prioritise making the scene safe so that he can work on the scene without any interference. The evidence should be preserved both at this stage and after the search and seizure.

The scene must be recorded as it was found and this can be achieved through notes, sketches, video recording and photography. The recording of the crime scene should include the positioning of the body in the case of a murder and video evidence when the investigator enters the scene.

Gathering and preserving digital evidence requires a search and seizure specialist who can search for and gather all types of digital evidence (Van Rooyen, 2013:283). The electronic video evidence found during a crime scene investigation should be secured and preserved and people trained in the field should be used to do this.

2.8 HANDLING OF VIDEO EVIDENCE AT THE SCENE OF CRIME

Investigators should understand the importance of handling evidence at a crime scene to ensure that the evidence is not contaminated and can be later used during court processes.

The South African and international perspectives regarding handling video evidence are discussed below with a view to identifying best practice.

2.8.1 South African Perspective

In South Africa, investigators should take precautions in the collection, preservation and transportation of video evidence from an electronic crime scene by making sure that they recognise, identify, seize and secure all video evidence present at the scene; document the entire scene and the specific location where the evidence was found; collect, label and preserve the video evidence; and package and transport it in a secure manner.

Prior to collecting any video evidence at a crime scene, the first responders should ensure that the legal authority exists to seize the evidence; the scene has been secured and documented; and appropriate personal protective equipment

is used. Only trained and skilled first responders in the field of video evidence should be used (United Nations, 2009:1).

2.8.2 International Perspective

For countries with or without any regulation or existing legislation, the challenge is to develop a balanced system for the use of electronic evidence gathering that seeks to strike the balance between the effective use of electronic evidence gathering and the protection of citizens' rights. This includes balancing the cost of using these methods against the ultimate public benefit gained from the conviction of the perpetrator of the crime being investigated (United Nations, 2009:1).

2.9 SECURING AND EVALUATING THE SCENE FOR VIDEO EVIDENCE

The primary responsibility of the first responder at a crime scene should be the safety of everyone and all the activities carried out should comply with the existing legal prescripts of the country concerned. After securing the scene, the investigator should then identify the potential video evidence along with the other evidence and ensure that the integrity of the evidence is properly preserved as video evidence can easily be altered, deleted or destroyed. The first responder should document, photograph and secure video evidence as soon as possible at the scene.

When securing and evaluating the scene, the first responder should, following the relevant legislative prescripts, immediately secure all the electronic devices, including personal or portable devices. They should ensure that no unauthorised

person has access to any electronic devices at the scene and should refuse any help or technical assistance from any unauthorised person. They also need to remove all people from the crime scene or the immediate area from which evidence is to be collected and, lastly, ensure that the condition of the evidence is not altered.

2.10 DIFFERENT TYPES OF VIDEO AND VISUAL EVIDENCE

There are vast arrays of electronic surveillance devices and with them different types of video and visual evidence. As this study confines its consideration of surveillance practices to electronic surveillance and no other forms of surveillance, for the purposes of this report, the terms “surveillance” and “electronic surveillance” are synonymous and used interchangeably. Hidden video surveillance devices, in-car video systems, body-worn video devices, thermal imaging, CCTV and cell phone recordings are all types of surveillance devices (United Nations, 2009:2). Video and audio recordings, computer-generated evidence, photographs and films constitute video and visual evidence (United Nations, 2009:2).

Digital cameras contain photographs and video clips taken by the owner, which can be stored on the internal memory of the camera or on data cards inserted into the camera. Cell phones can store a multitude of data and many have almost the same functionality as computers and can take photographs and video clips (Van Rooyen, 2013:276). Video recordings are admissible as evidence in a court of law. In *S v Ramgobin* 1986(4) SA 117 (17), the court ruled that there was no difference between the admission of audio and video recordings as evidence (Laura, 2001:6).

A photograph, in the same way as a piece of paper, is regarded as real evidence because when it is presented to prove what has been captured by the camera it can be interpreted as a document (De Villiers, 2008:6).

2.11 LEGAL REQUIREMENTS FOR THE ADMISSIBILITY OF VIDEO

EVIDENCE

The Bill of Rights is the cornerstone of democracy in South Africa. It enshrines the rights of all the people in the country and affirms the democratic values of human dignity, equality and freedom. The state must respect, protect, promote and fulfill the rights specified in the Bill of Rights. The rights in the Bill of Rights are subject to the limitations contained in section 36 of the Constitution of the Republic of South Africa (South Africa, 1996).

Although search and seizure are important for combatting crime, they are measures that infringe on the personal rights and privileges of individuals protected by the Constitution, i.e. the right to dignity, bodily integrity, privacy and the prohibition of search, and the right to possession and freedom of movement. These are universally acknowledged rights protected in the democratic constitution and international treaties (Hiemstra, 2009).

According to Murphy (2007:130), the lack of regulation in the use of CCTV cameras is a major concern in the potential to infringe on individuals' rights. Depending on the area in which they are installed, the screens may be viewed by

police or, more usually, by civilians, police employees, municipal council members and private security firms.

There should be no limit on how long the tapes can be held and no statutory restrictions on who can view them (Murphy, 2007:132). The erosion of privacy has been reduced by government in legislating in this area and restricting access to tapes by taking sensible measures to operate cameras (Murphy, 2007:131).

2.11.1 South African Legal Requirements

The following are legislative prescripts in South Africa that regulate electronic evidence.

2.11.2 The Constitution, Act 108 of 1996

In terms of the South African Constitution (Act 108 of 1996), everyone has the right to equality before the law and inherent dignity that must be respected and protected. In addition, everyone has the right to life, freedom and securing of the person, privacy, freedom of expression, freedom of movement and residence, access to information, just administration and access to court.

All the above-mentioned rights are limited in terms of section 36 of the Constitution. The rights are limited only in terms of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, such as the nature of the right, the importance of the reason for

the limitation, the nature between the limitation and its purpose and less restrictive means to achieve the purpose.

2.11.3 Criminal Procedure Act, Act 51 of 1977

Section 20 of the Criminal Procedure Act states that:

“the state may seize certain articles, in accordance with the provision of this chapter, seize anything which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence whether within the Republic or elsewhere which may afford evidence of the commission or suspected commission of an offence whether within the Republic or elsewhere; or which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence”.

The major concern regarding the seizure of video evidence is the lack of regulation in the use of electronic video evidence because at the moment, depending on the area, the evidence can be viewed by anyone, such as police officials, civilians and private security companies. With the regulation in place there will not be any limitation on how long the video or recording should be kept and no statutory restrictions on who is allowed to view it. The erosion of the right to privacy has been reduced by government in legislating in this area and in putting restrictions to accessing the recordings by taking sensible measures to

operate cameras (Murphy, 2007:131). Joubert (2010:362) states that the provisions of the Electronic Communication Act, 2002 (ECA) govern the admissibility of data or information from electronic communication transactions.

Van Rooyen (2008:259) states that, where it is possible, video recording evidence and photographs should complement each other; the date and time should always be indicated on the video footage, which should also state who was in control of the video and whether it was under lock or not. The investigator handling the evidence should be able to prove that the chain was never tampered with.

A picture alone is worth a thousand words. According to Kruger (2009) in order for the evidence to be admissible in court it must conform to the law of evidence prerequisites such as constitutionality and credibility.

2.11.4 International Legal Requirements

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) states that:

“No one shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attack on his honour and reputation and everyone has the right to the protection of the law against such interference or attacks”.

Article 8 of the European Convention on Human Rights stipulates that everyone have the right to respect for his private and family life, his home and his correspondence. Public authorities may not interfere with the exercising of this

right unless they do this in accordance with the law and as necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (United Nations, 2009:8).

This legal requirement plays an important role in the collection of video evidence in that if it is not properly considered it will result in the evidence being inadmissible in the court of law. During the process of investigation, investigators should respect the rights of the suspected criminals.

2.12 HOW VIDEO FOOTAGE EVIDENCE IS COLLECTED, PROCESSED AND PRESENTED IN COURT

The collecting, processing and presenting of video footage evidence play a very important role in the investigation of murder cases against the police and are elaborated on in the sections that follow.

2.12.1 The Collection of Video Evidence

The collection of video evidence entails the search for, identification of, collection of and documentation of computer-based digital evidence from communication device. The collection phase can involve real-time and stored information that may be lost unless the necessary attention is paid at the scene (Van Rooyen, 2013:295). It is important that the first responder to the scene should have the authority to search for and collect evidence at an electronic crime scene. The first

responder must be able to identify the authority under which they may seize evidence. Digital electronic video evidence should be handled carefully to preserve its physical integrity and the integrity of the data it contains. Communication devices such as mobile phones and smart phones should be secured and prevented from receiving or transmitting data once they are identified and collected as evidence.

2.12.2 Packaging, Transportation and Storage of Digital Electronic Video

Evidence

The evidence is fragile and sensitive to extreme temperature, humidity, physical shock, static electricity and magnetic fields. The first responder should take precautions when documenting, photographing, packaging, transporting and storing digital electronic video evidence to avoid altering, damaging or destroying the data integrity.

2.12.2.1 Packaging Procedure

When packaging digital electronic video evidence, the first responder should ensure that the evidence collected is thoroughly documented, labeled, marked, photographed, recorded or sketched and entered into an inventory before it is packaged. As it is possible that the evidence will contain latent, trace or biological evidence, appropriate steps should be taken to preserve this evidence. Digital electronic video evidence imaging should be carried out before latent, trace or biological evidence-retrieving processes are conducted on the evidence.

Only paper bags and envelopes, cardboard boxes and antistatic containers should be used for packaging digital electronic video evidence as plastic bags produce static electricity and as a result may allow humidity and condensation to develop.

The evidence should be packaged in a manner that will prevent it from being bent, scratched or deformed. All containers used to package and store digital electronic video evidence should be clearly and properly labeled. Cellular, mobile or smart phones should be left in the power state in which they were found (United Nations, 2009:13).

2.12.2.2 Transportation Procedure

When transporting digital electronic video evidence, the first responder should: 1) keep the evidence away from magnetic fields produced by radio transmitters or speaker magnets; 2) avoid keeping the evidence in a vehicle for a long time because heat, cold and humidity can damage or destroy evidence; 3) ensure electronic devices are packaged and secured during transportation to prevent damage from shock and vibration; and 4) document the transportation of the evidence and maintain the chain of custody on all evidence transported (United Nations, 2009:13).

Van Rooyen (2013:294) confirms the above advice by stating that when an investigator is transporting electronic video evidence away from a scene of crime, they must prevent it from being damaged and keep it away from strong magnets.

When the evidence arrives at the laboratory, it must be logged and secured to maintain the chain of possession.

2.12.2.3 Maintaining Chain of Possession

In securing the evidence, maintaining its chain of custody is very important. The person who finds evidence should mark it for identification and evidence bag or paper container. The final container for the collection of the evidence is labeled with pertinent information. The container is then sealed, and the collector's signature is written across the sealed edge.

The container is given to the next person responsible for its care. That person takes it to the laboratory and signs it over to the technician, who opens the package for examination at a location other than the sealed edge. On completion of the examination, the technician repackages the evidence with its original packaging, reseals the evidence in a new packaging, and signs the chain-of-custody log attached to the packaging. This process ensures that the evidence is responsibly handled as it is passed from the crime scene to a courtroom.

To maintain data security and the chain of evidence, once the evidence is acquired, the protocol should state that it should be kept under lock in a secured environment.

The evidence should be left in reputable hands and careful security procedures should be followed. The chain of custody should be maintained throughout the

course of the acquisition and analysis and preferably in writing (Nelson, Olson & Simek, 2006:21).

2.12.2.4 Storage Procedure

When storing digital electronic evidence, the first responder should: 1) ensure that the evidence is inventoried in accordance with the applicable policies; 2) ensure that the evidence is stored in a secure, climate-controlled environment or location that is not subject to extreme temperatures or humidity; and 3) ensure that the evidence is not exposed to magnetic fields, moisture, dust, vibration or any other element that may damage or destroy it (United Nations, 2009:13).

2.12.2.5 Regulations, Warrants and Authorization

The use of electronic evidence gathering techniques by law enforcement is commonly regulated by a warrant-based system that is subject to some form of oversight. Not all electronic surveillance is regulated by this system though. Forms of surveillance such as in-car video systems, body-worn video devices and police-monitored CCTV and video cameras are typically regulated by codes of conduct or practice and guidelines.

Where the electronic surveillance is conducted in a private situation, then a warrant of arrest will usually be required. This involves the interception of landline phones and mobile phones and the installation and monitoring of tracking devices. The attainment of authorisation in advance ensures that the evidence is obtained lawfully. Unlawful collection is likely to have implications for the admissibility of that evidence. The method of regulation varies from country to

country as in some countries the authority to conduct surveillance is issued by the courts in accordance with the applicable legislation. In other countries, the courts have a primary regulatory role (United Nations, 2009:13).

The relevant protocols for collecting, processing, presenting, packaging and storing video evidence should be followed to the letter to ensure that the evidence is preserved throughout the chain.

2.13 CONSIDERATION OF ELECTRONIC VIDEO EVIDENCE IN DEATH INVESTIGATIONS

The important consideration of electronic video evidence in a murder case against the police is dealt with below.

2.13.1 Death Investigations

Potential digital electronic evidence in death investigations is obtained from computers, internet service bills, removable media, external data storage devices, mobile communication storage devices, address books and contact information. The evidence can take the form of telephone records, personal writings and diaries, medical records, printed e-mail, notes, letters, financial or asset records, recently printed materials, information regarding legal documents, information regarding internet activity and will-making software or references.

2.14 ANALYSIS OF EXISTING STUDIES

Many studies globally have examined the effectiveness of video evidence as a law enforcement tool. In this research, studies were consulted to obtain information on the apparent effects of video evidence on the solving of various types of crime and the effects of video evidence according to the environment in which the video cameras operate. The studies were analysed to provide a framework for understanding South Africa programmatic characteristics that may impact on video evidence, describing qualitative difference between the prevention of criminal subjects.

2.15 CRIME DETECTION, MITIGATION AND PROSECUTION

Essential to deterring crime is the detection and arrest of criminals. Operational differences between CCTV video footages affect the police's ability to mitigate crime as it is happening and the prosecution of a crime after it has been committed. Law enforcement agencies argue that video evidence provides a critical prosecutorial tool and is effective in the arrest and prosecution of suspects (United Nations, 2009:17).

A crime captured on video may move an undecided court to reach a guilty verdict or a judge to impose a more severe sentence on the accused person. For instance, two accused captured on video shooting a young man in southwest Fresno in the US were arrested and initially pleaded self-defense but on learning of the existence of video evidence they confessed to the crime (Guy, 2008).

2.16 CHARACTERISTICS OF VIDEO EVIDENCE

The effectiveness of video footage in reducing crime, and its operational use as a crime mitigation and prosecution tool, suggests that South Africa programmatic characteristics heavily influence the success of video programmes (United Nations, 2009:18).

Video scene documentation may include a video walk-through, especially in major cases that involve multiple homicides. A video recording can offer a better feel for the layout of the crime scene, how long it takes to get from one room to another and how many turns are involved. It can also reveal something that was overlooked at the crime scene because the investigators failed to look for it. During the video walk-through, the investigator captures the entire crime scene and surrounding areas from every angle and provides a constant audio narrative.

2.17 SUMMARY

From the literature review presented in this chapter, it is evident that video evidence plays a significant role in the investigation of murder cases. The practice and principles governing electronic video evidence gathering during investigation should be kept in mind. The challenges with regard to the resources, especially training and technology, if not addressed and properly considered will have a negative impact in the use of video evidence in the investigation of murder cases.

From the information gathered in this chapter it is evident that video evidence plays a very important role in the investigation of crime, particularly murder cases. The evidence is admissible in the court if all the legal requirements,

procedures, and applicable policies have been followed in respect of collection, processing, analysis and transportation. The investigators should possess the necessary skill and familiarise themselves with the objectives of the investigation process.

Evidence can play an enormous role during the court process if it is preserved following the necessary legal requirements and procedures during investigation. It is important that the evidence should not lose its value and integrity after its collection. Proper possession must be maintained to ensure that the evidence is admitted in a court of law. Surveillance cameras are an important technique in the investigation of murder cases and evidence collected in this way is admissible in a court of law, if collected and preserved lawfully. Knowledge of the different types of surveillance enables investigators to differentiate between the types of surveillance they are dealing with.

In the next chapter, the researcher presents, analyses and interprets the results of the relevant decided cases consulted and the participants' answers to the questionnaire asked of them in the interviews.

CHAPTER 3: PRESENTATION, ANALYSIS AND INTERPRETATION OF THE STUDY FINDINGS

3.1 INTRODUCTION

The purpose of this chapter was to discuss the research findings of the study. In order to achieve the aim and objectives of the study, the following research question was asked: “What is the significance of video evidence analysis in the investigation of murder cases against the police?” The findings of the study are discussed in terms of section A, B and C of the interview schedule.

3.2 FINDINGS

Investigators were asked questions regarding their experience of the use of video evidence.

3.2.1 Historical Information

The question “How long have you been an investigator?” was posed to Section “A”. The following answers were provided by the participants:

- Two participants indicated that they had 30 years of experience as an investigator.
- Two participants stated that they had 12 years.
- One participant indicated that he/she has 22 years.
- One participant indicated that he/she has 14 years.
- One participant indicated that he/she has 11 years.

- One participant indicated that he/she has 9 years.
- One participant indicated that he/she has 8 years.

In response to the question “Did you undergo basic investigator training?” the Section “A” participants provided the following answers:

- Seven participants indicated that they had attended basic investigator training.
- Two participants indicated that they had not undergone any basic investigator training.

The question “Did you do training on the use of video evidence?” was posed to Section “A”. The participants provided the following answers:

- Seven participants indicated that they had not received training on the use of video evidence.
- Two participants stated that they had received training on the use of video evidence.

The question “Do you make use of video evidence during investigation?” prompted the following answers from the Section “A” participants:

- Six participants indicated that they made use of video evidence during investigation.
- Two participants stated that they did not make use of video evidence during investigation.
- One participant reported making use of video evidence when there was a need to do so.

3.2.2 The Admission Requirements of Video Evidence

Section “B” was asked questions regarding the admission requirements of video evidence. In response to the question “What is video evidence?” Three participants from Section “B” answered: “*it is evidence recorded through electronic devices.*” In contrast, another three participants said: “*video evidence is the methods and rules that guide and govern the establishment of a fact before a court.*”

The researcher disagrees with these participants because video evidence is not a method and rules. Two other participants answered: “*it is a video recording including digital recording presented in court*”, while the last said: “*it is electronic evidence that should be legally recorded.*” The researcher agrees with this last participant because, although they did not provide a definition of what video evidence is, they indicated that it is advisable to record this evidence within the ambit of the law.

To the question posed to Section “B”, “What are the different types of video evidence?” the participants gave the following answers: four of the participants stated that it is a “*cell phone as video evidence*”. Another four of the participants indicated that “*it is video camera evidence*”, while one participant stated that “*it is the CCTV as video evidence*”. The researcher is of the opinion that all of the participants provided correct answers.

To the question posed to Section “B”, “What is the admissibility of video evidence?” the participants provided these answers: three participants indicated:

“the evidence has to comply with minimum requirements e.g. source / operator credentials and how it is taken.” One participant stated: *“evidence is admissible if the statement is obtained regarding the person who obtained such evidence can testify”*. One participant indicated that evidence is *“admissible when obtained and retrieved legally”*. Four of the participants stated that *“if evidence is taken legally it will be admissible”*. The researcher agrees with the participants that evidence must be obtained in a legal manner.

To the question “What is forensic investigation?” the Section “B” participants gave the following answers. Two participants indicated: *“forensic investigation is an investigation of crime through scientific methods.”* The researcher agrees with the participant in that forensic investigation involves the use of different types of expertise. Three participants stated that it is *“the use of scientific expertise such as ballistics, dactyloscopy, chemistry and biology analysis”*. One stated that it is *“the use of scientific evidence to investigate a crime”*.

The researcher is of the opinion that the participants are correct in their focus on the use of scientific methods in this type of investigation. In contrast, two stated that *“it is a systematic search for the truth”*, one stated that *“it is a criminally oriented method to link offender with crime using science”* and the one stated that *“it is about doing investigation of follow-up information using advanced methods such as pathologies and crime scene experts”*. The researcher is of the opinion that these participants did not provide a clear definition of forensic investigation since they confuse it with the concept of investigation in general.

The question “What is criminal investigation?” was posed to Section “B” and received the following answers. Five participants said: “*criminal investigation is searching for the truth through legal means*”; two participants said, “*a systematic method of collecting information regarding crime that involves tracing people and instruments*”. Another participant indicated that it is “*an inquiry to uncover the truth*”. This statement was supported by the last participant, who indicated that it is to “*conduct an inquiry regarding circumstances under which a crime has committed*”. The researcher agrees with the participants that criminal investigation is a systematic search for the truth.

To the question posed to Section “B” “What are the differences between criminal and forensic investigation?” the following answers were given by the participants. All nine participants indicated: “*criminal investigation does not require specialised scientific methods, while forensic uses scientific methods.*” One participant elaborated: “*criminal investigation entails interviewing witness and taking statements, forensic investigation entails solving crime by scientific methods.*” It was clear from this discussion that the investigators are knowledgeable about the differences between criminal and forensic investigation.

To the question “What is the importance of video evidence?”, the following answers were given by the Section “B” participants. In the opinion of one participant, “*video evidence is the real evidence.*”

The researcher agrees with this opinion. In support of this, another participant indicated that video evidence is “*used to capture information as it is*”. It is clear

from these participants that the evidence produced by video footage does not change the recorded events in any way. A further participant indicated that video evidence is used *“to preserve the evidence in its authenticity and present it to court in its original format”*. The researcher concurs with this participant because the evidence obtained through a video does not change. In support of this, another participant indicated that *“it shows the scene as it is”, with a further participant indicating that “it produces original evidence during the trial”*. The researcher agrees with this participant that video evidence is presented in court in the same way as it is found. In support of this view, one participant stated: *“it records evidence or crime scene and present to court as it is.”* One participant indicated: *“video evidence does not lie for as long as it is authentic and relevant.”* This was supported by a participant in their statement: *“it is lead, linkage, reliable and relevant evidence.”* The researcher is of the opinion that these participants are correct and had a comprehensive understanding of the importance of video evidence.

To the question posed to Section “B”, “What are the objectives of forensic investigation?”, the following answers were given by the participants: *“to obtain scientific evidence to support criminal investigation”, “to solve crime problem, to uncover how crime was committed”, “to link the offender with the crime in question and to eliminate the ultimate goal to solve crime”, “to present expert evidence in court”, “to convict the suspect or prove his innocence beyond reasonable doubt”, “to link offender with committed crime and to prove guilt or innocence of offender” and “to prove that something did or did not happen in*

criminal or civil case". The researcher concurs with the opinions of all seven participants who answered the question.

3.2.3 Significance of video evidence in the investigation of murder against the police.

The members of Section "C" were asked questions related to the significance of video evidence in the investigation of murder against the police. To the question "What is murder?" all nine participants from Section "C" indicated that murder is the *"unlawful and intentional killing of a human being by another which is punishable by the state"*. The researcher is of the opinion that all nine participants are correct and that the participants do understand what murder is.

To the question posed to Section "C", "How do you maintain the chain of possession of video evidence?" the following answers were given by the participants. One participant suggested: *"keep it in safe custody and ensure that it is not tampered with until it reaches the court room."* The researcher agrees with this participant. Another participant supported this view by suggesting: *"maintaining a continuous possession and safekeeping of video evidence"*. In contrast, the answers of the other seven participants revealed that they did not understand or were unsure of what a chain of custody is. One participant stated: *"any person who handles evidence must give a statement"*, and another said, *"by keeping records of video evidence obtained"*.

To the question posed to Section "C", "What are the legal requirements for video evidence to be admissible in court?" the following answers were given by the

participants. One participant indicated that *“it must be authentic and original”*, while another stated that *“it should be legally obtained in some cases it should be taken by a trained person”*. This view was supported by a further participant, who indicated: *“it has to pass legal requirements as to who collected evidence and how it was collected.”* A last participant suggested that *“it has to be lawfully obtained”*. While the researcher found the participants’ answers to be correct, the participants did not specifically indicate the legislative framework on from which the requirements for video evidence to be admissible stemmed.

To the question “What is the procedure to be followed when uplifting and analysing video evidence?” the following answers were given by the participants. One participant suggested *“editing”* and another *“establish protocol and follow it in lifting evidence, edit video evidence”*. The researcher is of the opinion that these participants are correct. The other seven participants did not indicate the procedure for uplifting and analysing video evidence. Editing video evidence is valid where it has been taken from a damaged recording device. In this case, before the video evidence can be analysed, it should first be repaired from the damaged recording device (Bureau of Justice Assistance, 2009:3). This may involve editing the evidence.

To the question posed to Section “C”, “What are the benefits of using video evidence?” the following answers were given by the participants. One participant indicated that it *“depict the visual of the offence or event”*, while another one stated: *“it may eliminate the need to visit the scene.”* The researcher is of the opinion that the participants are correct. One of the participants stated: *“it*

presents the evidence to court in its normal form.” In contrast, another participant indicated that it can be admitted without having been analysed. The researcher disagrees with this participant since video evidence should be analysed prior to presenting it in court. Video evidence provides an eyewitness account of a crime so that the investigating officers can watch and hear what happened (Bureau of Justice Assistance, 2009:2). These officers need to be able to explain what is shown in the video footage to the court and need to analyse the footage.

The Bureau of Justice Assistance (2016:3) indicates the following benefits using video evidence:

- It incorporates clips into a slideshow presentation.
- It captures stills that can be printed for use as supplementary exhibits.
- It has potential for the in-court identification of the accused as the perpetrator.
- It captures the identified accused in the act of committing crime.
- It may corroborate eyewitness testimony.
- It may be used to impeach defense witness testimony.

To the question posed to Section “C”, “What are the shortfalls of video evidence?” the following answers were given by the participants. Six of the participants indicated: *“it can be easily altered, manipulated and tampered with to defeat the purpose of investigation.”* The researcher agrees with these participants. Technological advancement has made it possible to alter the video through the editing process. The other three participants indicated, *“poor quality of images and sometimes omitting certain images and not authenticated”*.

3.3 SUMMARY, RECOMMENDATIONS AND CONCLUSION

3.3.1 Introduction

This chapter presents a summary of the findings of the study, the conclusions reached from the findings and recommendations that emerge from the conclusions. It also highlights the objective and research question presented in Chapter 1 and which form the basis of the study.

The objective of the study was “to determine the significance of video evidence analysis in the investigation of murder cases against the police”.

Therefore, the research question for the study was: “What is the significance of video evidence in the investigation of murder against the police?”

3.4 SUMMARY OF THE FINDINGS

3.4.1 Summary Related to Section “A”

The findings are that:

- All 9 participants have between 8 and 30 years’ experience as investigators.
- Seven out of nine participants attended basic investigator training.
- Seven out of the nine participants did not receive training on the use of video evidence.

- Seven out of the nine participants made use of video evidence during investigation.

3.4.2 Summary Related to Section “B”

It was established that:

- Not all the participants provided a clear definition of video evidence.
- All nine participants stated the different types of video evidence as CCTV, video camera and cell phone, mistaking the video recording device for video evidence.
- They all agreed that for video evidence to be admitted in court it should be obtained and retrieved legally.
- All nine participants explained forensic investigation as the investigation of crime through the use of scientific methods.
- On the other hand, criminal investigation was defined as the systematic search for the truth.
- The participants were clear about the differences between criminal and forensic investigation and stated that criminal investigation is a form of investigation that does not use science, while forensic investigation uses science in its method of investigation.
- The importance of video evidence was clearly stated as being used to preserve the evidence in its authenticity and present it to court in its original format.
- It was clear from the participants that the objective of forensic investigation is to obtain scientific evidence.

3.4.3 Summary Related to Section “C”

It was established that:

- The participants were clear on the definition of murder, which is the unlawful and intentional killing of another person.
- The participants indicated that the chain of possession can be maintained by safe keeping of the evidence to ensure that it is not tampered with.
- It was clear from the participants that in order for video evidence to be admissible in court, it has to be authentic and original.
- The participants stated that one of the procedures to be followed when uplifting and analysing video evidence is editing.
- The participants indicated that the benefit of using video evidence is to present the evidence to court in its original form.
- The participants stated that the shortfall of video evidence is that it can be altered, manipulated and tampered with.

3.5 RECOMMENDATIONS

3.5.1 Recommendations Related to Section “B”

It is recommended that investigating officers be provided with training on video evidence in order to become competent on defining and using video evidence. Given the fact that investigators’ lack of knowledge on the different types of evidence, it is recommended that in-service training be provided, and

investigators encouraged to study toward formal qualifications in both investigation and forensic investigation.

3.5.2 Recommendation Related to Section "C"

Based on the findings, the researcher recommends that investigators use the findings of this study, which can assist them in the investigation of crime using video evidence.

3.6 CONCLUSION

The purpose of this chapter was to present, analyse and interpret the findings of the study. The SAPS have few investigators that have undergone training on the use of video evidence. However, most of them have been investigators for a number of years, ranging from 8 years to 30 years, which means that they generally have a good deal of experience. The investigating officers indicated that they make use of video evidence, while indicating that they had not received training on the use of video evidence. It was unclear whether they fully understood the questions posed to them. It was established that investigating officers are not conversant with the admission requirements of video evidence. The different types of evidence were confused with the devices that produce video evidence.

The investigating officers were unclear about the chain of possession of video evidence. In addition, no investigating officer properly discussed the procedure to be followed when uplifting and analysing video evidence. The researcher chose to conduct research to determine the significance of video evidence analysis in

the investigation of murder cases against the police. The SAPS, the criminal justice system and the South African community will benefit from this study, as it would enhance investigating officers' knowledge and skills on how to deal with video evidence and expedite video evidence-related cases.

The findings of the study would also assist investigating officers in understanding the different types of video evidence and their admissibility in court. Investigating officers would also understand the differences between criminal and forensic investigation. Above, all, training in the form of seminars, workshops and presentations by external service providers along with studying toward formal qualifications on forensic investigation will add value to the knowledge and skills of current investigating officers.

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ANNEXURE A

21 May 2018

To Whom It May Concern

I, Susan Hall, MA Linguistics, ID 6009160072083, do hereby confirm that I have conducted an English grammar edit on the draft thesis entitled: "The significance of video evidence analysis in the investigation of murder cases against the police" by K.I. Kganyane.

Mr Kganyane is responsible for the quality and accuracy of the final submission.

Yours sincerely

A handwritten signature in black ink that reads "Susan Hall". The signature is written in a cursive style with a large initial 'S'.

Susan Hall

ANNEXURE B

INTERVIEW SCHEDULE FOR IPID INVESTIGATOR (SAMPLE A)

TOPIC: THE SIGNIFICANCE OF VIDEO EVIDENCE ANALYSIS IN INVESTIGATION OF MURDER AGAINST THE POLICE

SECTION A: HISTORIC INFORMATION

1. How long have you been an investigator?

.....

2. Did you undergo basic investigators training?

.....

3. Did you receive training in the use of video evidence?

.....

4. Do you make use of video evidence during investigations?

.....

SECTION B: WHAT ARE THE ADMISSION REQUIREMENTS OF VIDEO EVIDENCE?

1. What is video evidence?

.....
.....

2. What are different types of video evidence?

.....
.....

3. What is the admissibility of video evidence in court?

-
.....
4. **What is Forensic Investigation?**
.....
.....
 5. **What is Criminal Investigation?**
.....
.....
 6. **What is the difference between Criminal and Forensic Investigation?**
.....
.....
 7. **What is the importance of video evidence?**
.....
.....
 8. **What are the objectives of Forensic Investigations?**
.....
.....

SECTION C: HOW SIGNIFICANT IS VIDEO EVIDENCE IN THE INVESTIGATION OF MURDER CASES AGAINST THE POLICE?

1. **What is murder?**
.....
.....
2. **How do you maintain chain of possession of video evidence?**
.....
.....
3. **What are the legal requirements for video evidence to be admissible in court?**
.....
.....
4. **What is the procedure to be followed when uplifting and analysing video evidence?**
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5. What are the benefits of video evidence?

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6. What are the shortfalls of video evidence?

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7. What are the shortfalls of video evidence?

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ANNEXURE C



MINISTRY OF POLICE

REPUBLIC OF SOUTH AFRICA

Private Bag X9080, Cape Town 8000 Tel: 021 – 467 7010/21 Fax: 021 – 467 7033 Private Bag X463 PRETORIA, 0001, Tel: (012) 393 2800, Fax: (012) 393 2819/20

Enquiries: I.A Mbangeni, Chief of Staff

The Registrar,
University of South Africa (UNISA)
Pretoria

Dear Sir/Madam

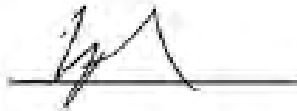
Consent and Approval of Research.

The Ministry of Police in the Republic of South Africa is an institution of democracy that derives its mandate from the Constitution of the Republic of South Africa. The Constitution mandates the Ministry to maintain peace and order as well as full management of the Criminal Procedures Act. To achieve this, the office of the Minister manages different security and state entities including the Independent Police Investigative Directorate (IPID).

Mr .K I Kgamanyane who is currently appointed as the acting Executive Director of IPID, has permission to conduct a research and interviews on *The significance of video footage evidence analysis in the investigation of Murder Cases against Police in South Africa*. The Ministry of Police will follow with great interest the findings of the research. All identified departments and divisions shall be directed to cooperate with the investigation or research.

The IPID has an important role to play in our country by building a truly effective police service. We believe that this shall be achieved well through working closely with academics and other institutions supporting innovation and research.

Sincerely,

A handwritten signature in black ink, appearing to be 'NPT Nhleko', is written above a solid horizontal line.

NPT Nhleko MP
Minister of Police
DATE: 31 March 2016